

three children: Monica, a graduate of Western High, received her own full academic scholarship to South Carolina State University where she is in her sophomore year studying pre-med; Traci is entering the ninth grade at Western High and David is a second grader at Howard Wasdenn Elementary School.

Residents of Clark County for close to twenty years, the Rawlinsons enjoy spending time with their family and friends from church. An active member of the Church of Christ in North Las Vegas, Johnnie served as Secretary of the Church for 10 years and taught Sunday school as well.

In late August 1997, I sent Rawlinson's name to the President as my nominee for Federal District Court Judge for the District of Nevada. On January 27, 1998, President Clinton formally nominated her for a seat on the federal bench. She was unanimously reported out of the Senate Judiciary Committee on March 26, 1998. Tonight she was confirmed by the Senate. Johnnie B. Rawlinson will be the first African American and the first woman to serve as a Nevada Federal District Court Judge.

JUDICIAL CONFIRMATIONS

Mr. LEAHY. Mr. President, I thank the Majority Leader for calling up the nominations of Justice Kermit Lipetz to the First Circuit Court of Appeals, Mrs. Johnnie Rawlinson to the District Court for the District of Nevada and Mr. Robert T. Dawson to the District Court for the Western District of Arkansas.

Before adjourning for a two-week recess, it is important for the Senate to clear its calendar of nominations to the maximum extent possible. Certainly the confirmation of these outstanding nominee, which the President sent to us back in October and November last year and earlier this year, are a step in the right direction. I have been urging the Majority Leader to move judicial nominations through the Senate and I thank him for doing so with respect to these nominees.

As the Senate prepares to recess, eight judicial nominations still remain on the calendar awaiting Senate action. With these three additional confirmations, the Senate will still have confirmed less than 20 judges for the year. This, at a time when we have already witnessed 100 vacancies so far this year and we see another 10 on the horizon. So, while I thank the Senate for its actions today, I must note that we have not closed the vacancies gap or ended the crisis of which the Chief Justice of the United States Supreme Court warned in his most recent year end report.

Most troubling to me are the continuing vacancies on the Second Circuit. I deeply regret the Senate's unwillingness to date to vote upon the nomination of Judge Sonia Sotomayor to the Second Circuit or to provide hearings for Judge Rosemary Pooler, Robert Sack and Chester Straub. I will

redouble my efforts to end the emergency that currently exists in the Second Circuit due to the five vacancies on that 13-member court.

I look forward to prompt action on all of the 36 judicial nominees still pending before the Senate. In addition, I urge the President to make good use of the next several days and to continue to send to the Senate qualified nominees for each of the judicial vacancies.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

CHILD SUPPORT PERFORMANCE AND INCENTIVE ACT OF 1998

Ms. COLLINS. I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 3130, and, further, that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3130) to provide for an alternative penalty procedure for States that fail to meet Federal child support data processing requirements, to reform Federal incentive payments for effective child support performance, to provide for a more flexible penalty procedure for States that violate interjurisdictional adoption requirements, to amend the Immigration and Nationality Act to make certain aliens determined to be delinquent in the payment of child support inadmissible and ineligible for naturalization, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2286

Ms. COLLINS. Senator Roth has a substitute amendment at desk and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. ROTH, proposes an amendment numbered 2286.

Ms. COLLINS. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Ms. COLLINS. I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2286) was agreed to.

Mr. ROTH. Mr. President, on behalf of the Finance Committee, I am joining with Senator MOYNIHAN and others

today to bring H.R. 3130, the Child Support Performance and Incentive Act of 1998, before the Senate. This important bill passed the House of Representatives earlier this month by a vote of 414 to 1.

When a bill passes the House by that wide of a margin, it is either non-controversial, of limited national significance, or an extremely important piece of legislation with broad and deep support. H.R. 3130 clearly falls within this last category.

The work on this legislation began shortly after the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" was signed into law. The 1996 welfare reform act required the Secretary of Health and Human Services to recommend to Congress a new, budget-neutral performance-based incentive system for the child support enforcement program. H.R. 3130 incorporates those recommendations which were developed in consultation with 26 representatives of state and local child support enforcement systems. The new incentive program is the centerpiece of this bill.

Under current law, the Federal Government returns more than \$400 million per year in child support collections to the states as incentive payments. But this incentive structure has been criticized for years as weak and inadequate. All States, regardless of actual performance, receive some incentive payments. But for more than a decade, performance has not been tied to the national goals of the program.

H.R. 3130 breaks with the past and creates five categories in which state performance will be evaluated and rewarded.

The States will be measured according to their performance in paternity establishment, establishment of court orders, collections of current child support payments, collections on past due payments, and cost effectiveness.

The legislation also requires the Secretary of Health and Human Services to make a future recommendation on adding another performance measure on medical support orders. Let me particularly thank Senator ROCKEFELLER for his work in designing a strategy to overcome the inherent barriers to medical support orders.

The new incentive structure is an important development not only for the child support enforcement system but also as a model for improving accountability and performance in government.

The second important feature of this bill is to provide for an alternative penalty procedure for those states that have failed to meet federal child support data processing requirements. Less than half of the States have been certified as in compliance. Without this change, states face not only the loss of their entire child support grant, but all of their funds in the Temporary Assistance for Needy Families program as well.

Such a result would obviously be crippling to a state and would ultimately hurt the very families these programs are intended to help.

Under the new alternative penalty procedures, those states which will not come into compliance this year will face a penalty of four percent of their child support funds.

This penalty would double each year in the following two years and would reach 30 percent in the fourth year a state failed to come into compliance. These penalties are tough but fair.

Under the Finance amendment, states will not face a penalty in the year in which they come into compliance. And states which come into compliance with the first two years after penalties have been imposed can have the penalty from the prior year reduced.

H.R. 3130 also provides additional flexibility to the states in how they design their automated systems.

In looking back over the history of automation, we find there were a number of mistakes made at both the federal and state levels which contributed to the delay in getting these systems operational. The child support enforcement system is a prime example of what can happen when regulations fail to keep pace with real world practices.

H.R. 3130 recognizes the advances in technologies and allows states to take advantage of these improvements. It properly refocuses federal policy on function and results rather than on rigid rules.

All of these changes will work together to get the states in compliance as quickly as possible. This will mean the child support enforcement system will work better for the families who depend on child support.

H.R. 3130 also makes a correction in how penalties are applied under the new "Adoption and Safe Families Act of 1997" which became law last November. It is vitally important that the states be held accountable for assisting the children in foster care.

A child should not be denied the opportunity to be adopted into a loving and caring family simply because the prospective parents live in the next county.

When the Department of Health and Human Services issues regulations on how the new penalties are enforced, it should, of course, provide the states with the opportunity to present evidence of how it complies with the new law. The review of this new requirement must be a fair and complete assessment of whether the law is being met.

Mr. President, this is indeed an important, bipartisan bill which will prove itself to pay dividends for America's families. I urge its adoption.

I ask unanimous consent a summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF H.R. 3130, "THE CHILD SUPPORT PERFORMANCE AND INCENTIVE ACT OF 1998" WITH SENATE MODIFICATIONS, MARCH 1998

TITLE I: ALTERNATIVE PENALTY PROCEDURE

Eligibility for alternative penalty. A state which is not in compliance with federal data processing requirements may enter into a corrective compliance plan with the Secretary of Health and Human Services. The plan must describe how, by when, and at what cost the state will achieve compliance. For failing to achieve compliance, a state would be penalized 4 percent of its federal administrative grant under the Title IV-D program beginning in FY 1998. The penalty will increase to 8 percent for the second year of noncompliance; 16 percent for the third year; and 30 percent for the fourth year and each subsequent year. A state is subject to a single reduction in a fiscal year.

Penalty waiver. A state is not penalized in the fiscal year in which it achieves compliance. A state will not be subject to a higher penalty as a result of a delay by HHS to conduct a review.

Penalty forgiveness. In the first two year period in which a penalty is applied, HHS shall reduce the penalty from the immediately preceding year when compliance is achieved. For example, the 4 percent penalty for FY 1998 will be reduced by 20 percent if compliance is achieved in FY 1999. The 8 percent penalty for 1999 will be reduced by 20 percent if compliance is achieved in FY 2000. There is no forgiveness for the previous year after the second year.

Penalty reduction for good performance. In the case of the 1996 welfare reform requirements, a state which fails to comply in a fiscal year could have its penalty for that year reduced by 20 percent for each performance measure under the new incentive system provided in Title II for which it achieves its maximum score.

Expansion of waiver provision. The authority of the Secretary to waive certain data processing requirements and to provide federal funding for a wider range of state data systems activities would be expanded to include waiving the single statewide system requirement under certain conditions and providing federal funds to develop and enhance local systems which are linked to state systems. To qualify, a state would have to demonstrate that it can develop an alternative system that: can help the state meet the paternity establishment requirement and other performance measures; can submit required data to HHS that is complete and reliable; substantially complies with all requirements of the child support enforcement program; achieves all the functional capacity for automatic data processing outlined in the statute; meets the requirements for distributing collections to families and governments, including cases in which support is owed to more than one family or more than one government; has only one point of contact for both interstate cases (which provides seamless case processing) and intrastate case management; is based on standardized data elements, forms, and definitions that are used throughout the state; can be operational in no more time than it would take to achieve an operational single statewide system; and can process child support cases as quickly, efficiently, and effectively as would be possible with a single statewide system.

Federal payments under waiver. In addition to the various waiver requirements described above, and to the requirements in current law, the state would have to submit to the Secretary separate estimates of the costs to develop and implement a single statewide system and the alternative system being proposed by the state plus the costs of operating

and maintaining these systems for five years from the date of implementation. The Secretary would have to agree with the estimates. If a state elects to operate such an alternative system, the state would be paid the 66 percent federal administration reimbursement only on expenditures that did not exceed the estimated cost of the single statewide system.

TITLE II. CHILD SUPPORT INCENTIVE SYSTEM

Amount of incentive payments. The incentive payment for a state for a given year would be calculated by multiplying the incentive payment pool for the year by the state's share for the year. The incentive payment pool would be:

FY 2000: \$422 million
FY 2001: \$429 million
FY 2002: \$450 million
FY 2003: \$461 million
FY 2004: \$454 million
FY 2005: \$446 million
FY 2006: \$458 million
FY 2007: \$471 million
FY 2008: \$483 million

After 2008, the incentive payment pool would increase each year by the inflation rate.

Performance measures. The incentive payments would be based on five performance measures: paternity establishment, establishment of support orders, collections on current payments, collections on past due payments (arrearages), and cost effectiveness.

Treatment of interstate collections. In computing incentive payments, supported collected by the state at the request of another state would be treated as having been collected by both states.

Regulations. The Secretary would be required to prescribe regulations necessary to implement the incentive payment program within nine months of the date of enactment.

Reinvestment. States would be required to spend child support incentive payments to carry out their child support enforcement program or to conduct activities approved by the Secretary which may contribute to improving the effectiveness or efficiency of the state child support enforcement program. In so doing, states would have to supplement and not supplant other funds used by the state to conduct its child support enforcement program.

Transition rule. The new incentive program would be phased in over two years beginning in FY 2000. In FY 2000, 1/3 of each state's incentive payment would be based on the new incentive system and 2/3 on the old system. In FY 2001, 2/3 of the payment will be based on the new system; and in 2002, the incentive payment will be based entirely on the new system.

General effective date. Except for the elimination of the current incentive program, the amendments would take effect on October 1, 1999.

TITLE III: ADOPTION PROVISIONS

More flexible penalty procedure to be applied for failing to permit interjurisdictional adoption. Under the "Adoption and Safe Families Act of 1997, a state is at risk of losing its entire IV-E grant for violating the new requirements on interjurisdictional adoptions. This provision allows the states to enter into a corrective compliance plan and reduces the penalty to 2 percent for the first violation, 3 percent for the second violation, and 5 percent for the third and subsequent violations.

TITLE IV: MISCELLANEOUS PROVISIONS

Elimination of barriers to the effective establishment and enforcement of medical child support. This provision is intended to eliminate the existing barriers to effective enforcement of medical support in three ways.

First, it requires the Secretaries of HHS and Labor to design and implement a Standardized Medical Support Notice. State child support agencies will be required to use this standardized form to communicate the issuance of a medical support order, and employers will be required to accept the form as a "Qualified Medical Support Order" under ERISA. Second, the Secretaries will jointly establish a medical support working group to identify and make recommendations for the removal of other barriers to effective medical support. Third, the Secretary of Labor is required to submit a report containing recommendations for any additional ERISA changes necessary to improve medical support enforcement.

Safeguard of new employee information. This provision imposes a fine of \$1,000 for each act of unauthorized access to, disclosure of, or use of information in the National Directory of New Hires. It also requires that data entered into the National Directory of New Hires be deleted 24 months after date of entry for individuals who have a child support order. For an individual who does not have a child support order, the data must be deleted after 12 months.

General Accounting Office study on program improvements. The General Accounting Office (GAO) is required to report to Congress on the feasibility of implementing an instant check system for employers to use in identifying individuals with child support orders. The report is also to include a review of the use of the Federal Parent Locator Service, including the Federal Case Registry of Child Support Orders and the National Directory of New Hires, and the adequacy of privacy protections.

Technical and conforming amendments. There are several technical and conforming amendments made. The two most noteworthy amendments deal with data collection in the calculation of the adopting incentive payments and collection of Social Security numbers and are described below.

(1) The new provision would give the states an additional five months to report data needed to calculate adoption incentive payments and the Secretary an additional four months to approve the data.

(2) The 1996 welfare reform law requires states to collect Social Security numbers on applications for state licenses for purposes of matching in child support cases by January 1, 1998. The "Illegal Immigration Reform and Immigration Responsibility Act of 1996" required states to collect Social Security numbers on applications for state licenses for purposes of checking the identity of immigrants by October 1, 2000. This amendment would conform the differing requirements by changing the date for child support cases to October 1, 2000, or such earlier date as the state selects.

Title V of the House bill regarding immigration provisions is not included in the substitute.

COMPARISON OF SENATE AND HOUSE PENALTIES

Example of a state with \$100 million IV-D grant:

1. Penalties faced if compliance is achieved in 1998: (Year 1) (Assumes did not submit December 31, 1997 letter to HHS).

House

FY 1998: \$1 million (\$4 million reduced by 75%)

Total: \$1 million

Senate

FY 1998: \$0

Total: \$0

2. Penalties faced if compliance is achieved in 1999: (Year 2).

House

FY 1998: \$4 million

FY 1999: \$2 million (\$8 million reduced by 75%)

Total: \$6 million

Senate

FY 1998: \$3.2 million (\$4 million reduced by 20%)

FY 1999: \$0

Total: \$3.2 million

3. Penalties faced if compliance is achieved in FY 2000: (Year 3).

House

FY 1998: \$4 million

FY 1999: \$8 million

FY 2000: \$4 million (\$16 million reduced by 75%)

Total: \$16 million

Senate

FY 1998: \$4 million

FY 1999: \$6.4 million (\$8 million reduced by 20%)

FY 2000: \$0

Total: \$10.4 million

4. Penalties faced if compliance is achieved in 2001: (Year 4).

House

FY 1998: \$4 million

FY 1999: \$8 million

FY 2000: \$16 million

FY 2001: \$5 million (\$20 million reduced by 75%)

Total: \$33 million

Senate

FY 1998: \$4 million

FY 1999: \$8 million

FY 2000: \$16 million

FY 2001: \$0

Total: \$26 million

5. Penalties faced if compliance is achieved in 2002: (Year 5).

House

FY 1998: \$4 million

FY 1999: \$8 million

FY 2000: \$16 million

FY 2001: \$20 million

FY 2002: \$5 million (\$20 million reduced by 75%)

Total: \$53 million

Senate

FY 1998: \$4 million

FY 1999: \$8 million

FY 2000: \$16 million

FY 2001: \$30 million

FY 2002: \$0

Total: \$58 million

ADOPTION AND SAFE FAMILIES ACT

Mr. COATS. Mr. President, I note that the "Child Support Performance and Incentive Act of 1998" contains a provision which amends the "Adoption and Safe Families Act of 1997." This provision deals with how the provision on elimination of geographic barriers to adoption is enforced. It is my understanding that this amendment does not affect the other provisions in the new law on reasonable efforts or the termination of parental rights.

It is my understanding that the purpose of the new law was to clarify federal policy regarding the protection of children in foster care. The adoption law makes clear that the health and safety of children must always be of paramount concern in any decision affecting the removal of children from their homes or the reunification of children with their families.

To receive foster care and adoption assistance funds, States are generally required to make reasonable efforts to

maintain children in their own homes or to reunify children and families when possible. However, it is my understanding that under the new law, the federal government does not require States to make such efforts in cases where a court finds that a parent has killed or assaulted a child or subjected the child to extreme forms of abuse or neglect. At the same time, the new law does not prevent a State from making efforts to preserve or reunify a family in such cases, as long as the child's health and safety are the paramount considerations. Is my understanding correct?

Mr. ROTH. Yes, that is correct. In addition, the adoption law establishes a new requirement that States must initiate termination of parental rights proceedings in specific cases that are outlined in the law. However, the law only requires States to initiate such proceedings and does not mandate the outcome. Moreover, the law provides that States are not required to initiate termination of parental rights in certain cases, including when there is a compelling reason to conclude that such proceedings would not be in the child's best interest. Thus, the State retains the discretion to make case-by-case determinations regarding whether to seek termination of parental rights.

Ms. COLLINS. I ask unanimous consent that the bill be deemed read a third time and passed, that the title amendment be agreed to, and the motion to reconsider be laid upon the table, and any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3130) was deemed read the third time and passed.

The title was amended so as to read:

An Act to provide for an alternative penalty procedure for States that fail to meet Federal child support data processing requirements, to reform Federal incentive payments for effective child support performance, to provide for a more flexible penalty procedure for States that violate interjurisdictional adoption requirements, and for other purposes.

A SPECIAL COMMITTEE TO ADDRESS THE YEAR 2000 TECHNOLOGY PROBLEM

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate resolution 208, submitted earlier today by Senator LOTT.

The PRESIDING OFFICER. Without objection. The clerk will report the resolution.

The assistant legislative clerk read as follows:

A resolution (S. Res. 208) to establish a special committee of the Senate to address the year 2000 technology problem.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.